

**§ 301.81-5**

**7 CFR Ch. III (1-1-11 Edition)**

or stop signs), or has been stored, packed, or parked in locations inaccessible to the imported fire ant, or in locations that have been treated in accordance with part 305 of this chapter, while in or moving through any quarantined area; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity; or

(3) Without a certificate or limited permit provided the regulated article is a soil sample being moved to a laboratory approved by the Administrator<sup>3</sup> to process, test, or analyze soil samples.

(b) Inspectors are authorized to stop any person or means of conveyance moving in interstate commerce they have probable cause to believe is moving regulated articles, and to inspect the articles being moved and the means of conveyance. Articles found to be infested by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of. Any treatments will be in accordance with part 305 of this chapter.

(Approved by the Office of Management and Budget under control number 0579-0102)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994; 59 FR 67609, Dec. 30, 1994; 67 FR 8464, Feb. 25, 2002; 70 FR 33268, June 7, 2005; 75 FR 4240, Jan. 26, 2010]

**§ 301.81-5 Issuance of a certificate or limited permit.**

(a) An inspector<sup>4</sup> or person operating under a compliance agreement will issue a certificate for the interstate

<sup>3</sup>Criteria that laboratories must meet to become approved to process, test, or analyze soil, and the list of currently approved laboratories, may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>4</sup>Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information on local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

movement of a regulated article approved under such compliance agreement if he or she determines that the regulated article:

(1) Is eligible for unrestricted movement under all other applicable Federal domestic plant quarantines and regulations;

(2) Is to be moved interstate in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the imported fire ant;<sup>5</sup> and

(3)(i) Is free of an imported fire ant infestation, based on his or her visual examination of the article;

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or destroy all life stages of the imported fire ant;

(iii) Has been treated in accordance with part 305 of this chapter; or.

(iv) If the article is containerized nursery stock, it has been produced in accordance with § 301.81-11.

(b) An inspector will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if the inspector determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the imported fire ant because the imported fire ant will be destroyed by the specified handling, utilization, or processing;

(2) Is to be moved interstate in compliance with any conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the imported fire ant; and

(3) Is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

<sup>5</sup>An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(c) An inspector shall issue blank certificates to a person operating under a compliance agreement (in accordance with § 301.81-6 of this subpart) or authorize reproduction of the certificates on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) of this section.

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[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994; 59 FR 67609, Dec. 30, 1994; 66 FR 21052, Apr. 27, 2001; 75 FR 4240, Jan. 26, 2010]

#### § 301.81-6 Compliance agreements.

Persons who grow, handle, or move regulated articles interstate may enter into a compliance agreement<sup>6</sup> if such persons review with an inspector each stipulation of the compliance agreement, have facilities and equipment to carry out disinfestation procedures or application of chemical materials in accordance with part 305 of this chapter, and meet applicable State training and certification standards as authorized by the Federal Insecticide, Fungicide, and Rodenticide Act (86 Stat. 983; 7 U.S.C. 136b). Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67609, Dec. 30, 1994; 75 FR 4240, Jan. 26, 2010]

#### § 301.81-7 Cancellation of a certificate, limited permit, or compliance agreement.

Any certificate, limited permit, or compliance agreement may be canceled

<sup>6</sup>Compliance agreements may be initiated by contacting a local office of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow within 20 days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

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[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994]

#### § 301.81-8 Assembly and inspection of regulated articles.

(a) Persons requiring certification or other services must request the services from an inspector<sup>7</sup> at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

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[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994]

#### § 301.81-9 Attachment and disposition of certificates and limited permits.

(a) The consignor must ensure that the certificate or limited permit authorizing interstate movement of a

<sup>7</sup>See footnote 4 to § 301.81-5(a).